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EXAMINER

KUDDUS, DANIEL A

ART UNIT

PAPER NUMBER

2164

NOTIFICATION DATE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/583,476

Applicant(s)

MARTIN ET AL.

Examiner

DANIEL KUDDUS

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office action has been issued in response to amendment filed May 11, 2009. In response to last office action, claims 1-10 have been amended. Claims 11-20 are presented new. Accordingly, claims 1-20 remain pending in this application. Applicant's arguments are carefully and respectfully considered and some are persuasive, while others are not. Accordingly rejections have been removed where arguments were persuasive, but rejections have been maintained where arguments were not persuasive. Also, a new rejections based on the newly added claims have been set forth. Accordingly, claims 1-20 are rejected and this action has been made **FINAL**, as necessitated by amendment.

Response to Arguments

2. With respect to applicant's arguments on pages 11-13, "*claim 1 recites..a method... nowhere does Ludwig disclose 'a method of backing up personal data of a wireless communication network subscriber'*". The Examiner respectfully disagrees with applicant's arguments. Ludwig teaches 'a method of backing up personal data of a wireless communication network subscriber' (see abstract, the method comprising..plurality of 'users' at their communication devices and allowing at least first and second users to connect to at least one 'communication network' by logging in at their respective communication devices... the service records including 'user identification information' and an associated location where 'each user' is logged in, [0047]).

With respect to applicant's arguments on pages 13-14, "*Office action alleges Ludwig discloses the personal data being memorised in a mobile communication device and backed up in a network server..Ludwig is silent with regard to the aforementioned feature of claim 1*". The Examiner respectfully disagrees with applicant's arguments. Ludwig teaches the personal data being memorised in a mobile communication device and backed up in a network server (see ¶ [0292], 'expert accesses' this 'recorded' meeting from 'his corporate memory', [0211], audio/video storage 'server'.. manages the audio/video files 'recorded and stored' on its storage 'devices'...storage 'devices' may typically include 'computer', [0042], teleconferences may be 'recorded and stored' for later 'playback', including both audio/video and 'all data interactions').

With respect to applicant's arguments on pages 14-15, "*the office action also alleges Ludwig discloses..a first subset of data is prepared from among a batch of data to be backed up and is transmitted to the server for backing up.. nothing to do with the aforementioned claim feature of claim 1*". The Examiner respectfully disagrees. Note that, batch is a set of items, records, or documents to be processed as a single unit. Hence, Ludwig teaches (see [0058], 'audio/video/data networking can also be implemented' using 'a single pair of lines' for both audio/video and 'data communications', [0107], transmit outgoing video and audio signals into ports and respectively, [0084], resulting single analog mosaic obtained from video mosaicing circuitry is then transmitted to the individual CMWs for display on the screens thereof, [0156], caller's image also appears on his/her own screen in a video mosaic, which will also include images of 'subsequently' added participants, [0249]).

With respect to applicant's arguments on page 15, "*office action alleges Ludwig discloses wherein said method includes an asynchronous backup mode.. Ludwig discloses an expert must*

communicate asynchronously to be able to immediately access a wide range of information, such disclosure, is completely silent to an asynchronous backup mode as recited in claim 1”.

Examiner respectfully disagrees. Ludwig teaches wherein said method includes an asynchronous backup mode in which, once a subset has been transmitted to the server (see ¶ [0005], the expert must communicate asynchronously--to bridge time as well as distance, [0042], teleconferences may be ‘recorded and stored for later playback’, including both audio/video and all data interactions, [0043], permits the asynchronous exchange of arbitrary multimedia documents, including previously recorded teleconferences).

With respect to applicant’s arguments on pages 15-16, “*office Action alleges Ludwig discloses the backup is delayed by a certain period of time so as to free the mobile device....real-time audio and video teleconferencing, such disclosure lacks disclosing, teaching or suggesting the aforementioned claim feature recited in claim 1”.* Examiner respectfully disagrees. Ludwig teaches the backup is delayed by a certain period of time so as to free the mobile device (see [0042], teleconferences may be recorded and stored for later playback, including both audio/video and all data interactions, [0051], accommodates both “real time” delay and jitter-sensitive signals (e.g., real-time audio and video teleconferencing) and classical asynchronous data (e.g., data control signals as well as shared textual, graphics and other media) communication among multiple CMWs regardless of their location, [0067], when transferring images, lossless...and user-perceived delay while maintaining high image quality).

With respect to applicant’s arguments on pages 16-17, “*the backup is resumed at the end of this period as recited in claim 1.. Ludwig does not disclose the above-identified features of claim 1”.* Examiner respectfully disagrees. Ludwig teaches the backup is resumed at the end of

this period (see [0216], transmission of audio/video files between itself and other audio/video storage and playback engines. File transfer can also be achieved by using the underlying audio/video network facilities: servers establish a real-time audio/video network connection between themselves so one server can play back a file while the second server simultaneously records it, [0139], the remote participant on hold, to resume a call on hold, to add one or more participants to the call, to initiate data sharing and to hang up the call).

With respect to applicant's arguments on page 17, "*claim 8 is additionally allowable because Ludwig does not disclose, teach or suggest a server for backing up personal data nor does Ludwig disclose, teach or suggest the server includes an asynchronous server backup program*". Examiner respectfully disagrees. Ludwig does teach a server for backing up personal data, the server includes an asynchronous server backup program (see [0231], MLANs can be used to establish a multimedia network connection between client workstations and the audio/video storage servers Audio/Video editors and viewers running on the client workstation use the same software interfaces as the multimedia teleconferencing system to establish these network connections, [0042], [0061], MLAN server supports the TCP/IP network protocol suite. Accordingly, software processes on CMWs communicate with one another and MLAN server via MLAN using these protocols, [0156], [0091]).

With respect to applicant's arguments on page 17, "*claim 9 is allowable because Ludwig does not disclose, teach or suggest a device backup application which can delay by a given period of time the backup of a subset of data as recited in claim 9. Claim 10 is also allowable at least due to its dependence from claim 9*". Examiner respectfully disagrees. Ludwig does teach argued claim recites limitations (see [0008], portable personal computer, [0156], caller's image

also appears on his/her own screen in a video mosaic, which will also include images of 'subsequently' added participants, [0127], subsequent videoconferencing and data conferencing functionality is discussed..in the context of particular usage scenarios, [0042]). Therefore, Ludwig teaches the limitations of claim 9. Ludwig further teaches the limitations of claim 10, which have been discussed in the detailed office action.

With respect to applicant's arguments "*Van cannot support a rejection of claims 2 to 7 under 35 U.S.C. §103(a) because, taken individually or in combination, these references lack disclosing, teaching, or suggesting each claim feature recited in claim 1..each of claims 2 to 7 depend directly or indirectly from claim 1 and, thus, includes all the corresponding features recited in claim 1. As set forth above, Ludwig fails to teach any of the features recited in claim 1..neither of the applied references discloses or suggests, at least, the above noted features of claim 1, Ludwig and Van, when taken individually or in any combination, cannot support a prima facie case for rejecting claims 2 to 7*". The arguments are moot. Ludwig teaches each and every claim recites limitations which have been discussed above and in the detailed office action. Van teaches additional features for the dependent claims. Hence, a prima facie case of obviousness have been established also. As such, Examiner concludes that taken alone or in combination of Ludwig in view of Van teaches claim recites limitations.

Examiner examines the claims based on 'broad and reasonable interpretation of claim' as recommended by MPEP§ 2105. *While it is appropriate to use the specification to determine what applicant intend a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. A broad interpretation of a claim by USPTO personnel will reduce the possibility that the claim, when issued, will be interpreted*

more broadly that is justified or intended. An applicant can always amend a claim during prosecution to better reflect the intended scope of the claim.

Objection

3. Claims 1-7 and 11-17 are objected to because of the following informalities:

In claims 1 and 11 “a method of backing up...” should read as “A computer implemented method of backing up”.

Appropriate correction is required.

Any claim not specifically addressed, above, is being objected as incorporating the deficiencies of a claim upon which it depends.

Claims 11-17 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1-7.

4. Applicant is advised that should claims 1-7 be found allowable, claims 11-17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two sets of claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one set of claims to object to the others as being a substantial duplicate of the allowed claims. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 18 is rejected under 35 U.S.C. §101 because the claimed invention is directed to a non statutory subject matter.

In claim 18, 'a server' and 'means for' is being recited, without having any hardware component. The claim lacks the necessary physical articles or objects to constitute a machine. Therefore, claim 18 is non-statutory. As such, the claimed system does not define any specific hardware and needs to be amended to include physical computer hardware (e.g. processor, memory) to execute the components.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 8-11 and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Ludwig et al. (US 2004/0107254 A1), hereinafter Ludwig.

As for claim 1, Ludwig teaches **method of backing up personal data of a wireless communication network subscriber** (see ¶ [0047], network environments accommodating thousands of users), **the data being memorised in a mobile communication device and backed up in a network server** (see ¶ [0292], expert accesses this recorded meeting from his corporate memory, [0008], portable personal computers, [0042], teleconferences may be recorded and stored for later playback, including both audio/video and all data interactions), **in which a first subset of data is prepared from among a batch of data to be backed up and is**

transmitted to the server for backing up (see ¶ [0156], caller's image also appears on his/her own screen in a video mosaic, which will also include images of subsequently added participants), **wherein said method includes an asynchronous backup mode in which, once a subset has been transmitted to the server** (see ¶ [0005], the expert must communicate asynchronously--to bridge time as well as distance), **the backup is delayed by a certain period of time so as to free the mobile device for the user** (see ¶ [0051], accommodates both "real time" delay and jitter-sensitive signals (e.g., real-time audio and video teleconferencing) and classical asynchronous data (e.g., data control signals as well as shared textual, graphics and other media) communication among multiple CMWs regardless of their location), **and the backup is resumed at the end of this period** (see ¶ [0139], the remote participant on hold, to resume a call on hold, to add one or more participants to the call, to initiate data sharing and to hang up the call).

Claim 8 have the same subject matter as claim 1 except for the limitation of server for backing up and Ludwig teaches such limitation (see ¶ [0061], MLAN server supports the TCP/IP network protocol suite. Accordingly, software processes on CMWs communicate with one another and MLAN server via MLAN using these protocols, [0156], [0091]). Therefore, claim 8 is rejected for the same reason as applied to claim 1 hereinabove.

Claim 9 have the same subject matter as claim 1 except it is directed to portable wireless communication device and Ludwig teaches such limitation (see ¶ [0008], portable personal computer) and is rejected for the same reason as applied to claim 1 hereinabove.

As for claim 10, Ludwig teaches **wherein said device selectively operates according to an asynchronous backup mode and a normal mode** (see ¶ [0046], collaboration session--

whether real-time or asynchronous--may include participants whose equipment provides capabilities ranging from audio only (a telephone) or data only (a personal computer with a modem) to a full complement of real-time, high-fidelity audio and full-motion video, and high-speed data network facilities).

Claim 11 have the same subject matter as claims 1 except for the limitation of one subset of data subsequent to the first subset of data and predetermined period of time. Ludwig teaches such limitations (see [0156], caller's image also appears on his/her own screen in a video mosaic, which will also include images of 'subsequently' added participants, [0249], [0150], [0186]). Therefore, claim 11 is rejected for the same reasons as applied to claim 1 hereinabove.

Claim 18, have the same subject matter as claim 8 except for the limitation of means for functionality; Ludwig teaches such limitations (see [0277], [0247]). Therefore, claim 18 is rejected for the same reasons as applied to claim 8 hereinabove.

Claim 19, have the same subject matter as claim 9 except for the limitation of means for functionality, predetermined period of time; Ludwig teaches such limitations (see [0249], [0150], [0186]). Therefore, claim 19 is rejected for the same reasons as applied to claim 9 hereinabove.

Claim 20 recites the corresponding limitations as set forth in claim 10 hereinabove, thus the claim is rejected accordingly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would

have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2-7 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig et al. (US 2004/0107254 A1) and further in view of Van Reenen, Ian, Carel et al. (WO 03/037015 A1), hereinafter Van.

As for claim 2, Ludwig teaches claimed invention except for the limitation of chip card. Van teaches such limitation (see page 2, SIM card, line 1).

Ludwig teaches a method for the plurality of users with collaboration initiation software at their communication devices and allowing at least first and second users to connect to at least one communication network by logging in at their respective communication devices (abstract), while Van teaches a method of backing up data in a mobile telephone, in which data is transmitted from the telephone device to a storage means via a telephone network (abstract). One of ordinary skill in the art at the time of the invention would have been motivated to include the features as taught by Van to improve the plurality of users with collaboration initiation software at their communication devices of Ludwig to an application software for the telephone device for

controlling connection to the back up facility and the transfer of data to and from the back up storage means.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to have modified the teaching of Ludwig by applying the teaching of Van to provide an application software for the telephone device for controlling connection to the back up facility and the transfer of data to and from the back up storage means. Further, data transfer in an encryption manner (see Van, page 2 and 3).

As for claim 3, Ludwig teaches **wherein, in order to resume the backup, the mobile device implements a countdown of the period and sends a resume signal to a chip card in the mobile device at the end of said period** (see ¶ [0150], this message could advise the caller when the call will be resumed, or could state that the call is being terminated and will be reinitiated at a later time, [0294]).

As for claim 4, Van teaches **wherein the mobile implements the countdown and sends the resume signal upon receiving an instruction from the chip card** (see page 2, line 2-5).

As for claim 5, Van teaches **wherein the chip card gives instructions to the mobile device by means of STK commands** (see page 2, line 14-17).

As for claim 6, Ludwig teaches **wherein the chip card gives instructions by means of 'GET STATUS' commands** (see ¶ [0150], a call on hold can conveniently be resumed by the caller clicking on a resume button on the active call window, which returns the corresponding callhandle back to the active state).

As for claim 7, Ludwig teaches **a prior assessment step which determines whether the volume of data to be backed up or the corresponding waiting time required to make the mobile device available to the user is higher than, if so, the backup is performed according to the asynchronous backup mode** (see ¶ [0045], the system architecture employs separate real-time and asynchronous networks--the former for real-time audio and video, and the latter for non-real-time audio and video, text, graphics and other data, as well as control signals, [0237], this audio/video file gets transferred over the data network to the client workstation and pre-staged on the workstation's local disk, [0238], a higher number of simultaneous recording sessions), **if not, the backup is carried out according to a default mode** (see ¶ [0045], separate real-time and asynchronous networks--the former for real-time audio and video, and the latter for non-real-time audio and video, text, graphics and other data, as well as control signals, [0240], [0243]).

Ludwig does not explicitly teach **a predetermined threshold**. Although Ludwig teaches (see [0065], after determining which of these conferees will accept the call, MLAN server controls A/V switching circuitry). Van teaches such limitations (see page 11, claim 22, predetermined manner).

Claims 12-17 have the same subject matter as claims 2-7 and are rejected for the same reasons as applied to claims 2-7 hereinabove.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Daniel A Kuddus whose telephone number is (571) 270-1722. The examiner can normally be reached on Monday to Thursday 8.00 a.m.-5.30 p.m. The examiner can also be reached on alternate Fridays from 8.00 a.m. to 4.30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or processing is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center

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(EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel Kuddus

Date: 07/02/09

/Charles Rones/

Supervisory Patent Examiner, Art Unit 2164